
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-03-NY-128
Forest Electric Corporation)	
WPWD334)	NAL/Acct. No. 200432380003
Edison, NJ)	
)	FRN: 0007 3992 31

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 29, 2003

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Forest Electric Corporation ("Forest"), apparently violated Section 1.903(a) of the Commission's Rules (the "Rules"),¹ by operating a repeater station on the unauthorized frequency of 473.175 MHz. We conclude that Forest is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. Beginning in May 2003, Commission agents monitored discrete frequencies between 473 and 479 MHz, in connection with an assignment to determine frequency usage on those frequencies in the New York City area. Continuous transmissions on 473.175 MHz were observed on monitoring equipment at the New York Office. A check of Commission's records showed that this frequency was assigned to the Jersey City Police Department, Jersey City, NJ. Further, the station utilizing the frequency 473.175 MHz did not provide station identification, indicating that the transmissions may be unauthorized.

3. On June 17, 2003, a Commission agent, using a mobile direction finding vehicle, monitored the frequency 473.175 MHz in Jersey City, NJ, and positively determined that transmissions were coming from a fixed station at a construction site on 30 Hudson Street in Jersey City, NJ. The agent spoke to the project superintendent of Turner Construction Company, concerning the unauthorized operation on a frequency assigned to a public safety entity, and was advised that the transmissions may be coming from a subcontractor using their own radio equipment.

¹ 47 C.F.R. § 1.903(a).

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4. On June 23, 2003, Commission agents, using a mobile direction finding vehicle, again monitored the frequency 473.175 MHz in Jersey City, NJ, and positively located the source of transmissions to an antenna located on a trailer operated by Forest, at a construction site on 30 Hudson Street in Jersey City, NJ. The agents conducted a station inspection with Forest's foreman Dan Gumble, and observed the transmitter in use, a Vertex Standard, VXR-7000, which is rated at 50 Watts. The agents advised Mr. Gumble that Forest was operating a repeater station on an unauthorized frequency of 473.175 MHz. There was no evidence of a Commission authorization for Forest to operate a repeater station on 473.175 MHz in Jersey City, NJ.

III. DISCUSSION

5. Section 1.903(a) of the Rules requires that "Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part." A review of Commission's records showed that Forest Electric Corporation was granted authority under its license, WPWD334, to operate one repeater station on a frequency of 463.250 MHz, and 40 mobile units on a frequency of 468.250 MHz. Agents observed the repeater station operating on 473.175 MHz.

6. Based on the evidence before us, we find that Forest operated radio transmission equipment on an unauthorized frequency of 473.173 MHz on June 17 and June 23, 2003, in willful² and repeated³ violation of Section 1.903(a) of the Rules.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),⁴ sets the base forfeiture amount for using an unauthorized frequency at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,⁵ ("Act") which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a four thousand dollar (\$4,000) monetary forfeiture is warranted.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Forest is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 1.903(a) of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Forest SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432380003 and FRN: 0007 3992 31.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200432380003.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Forest Electric Corporation, 160 Raritan Center Parkway, Suite 18, Edison, NJ 08837.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – Condensed List of Small Entities, October 2002